

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 01-35351

MARK STEVEN SKINGER
TAMMY SKINGER

Debtors

**MEMORANDUM ON BANKRUPTCY PETITION PREPARER
SHOW CAUSE ORDER**

APPEARANCES: ELLEN B. VERGOS, ESQ.
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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

This matter was heard on January 31, 2002, on the court's *sua sponte* Memorandum and Order filed January 9, 2002, requiring Virginia Jarvis, a bankruptcy petition preparer, to show cause why fines should not be levied against her for failure to comply with various provisions of 11 U.S.C.A. § 110 (West Supp. 2001).

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(A) (West 1993).

I

The Debtors commenced their Chapter 7 bankruptcy case by the filing of a Voluntary Petition under Chapter 7 on October 31, 2001. They were not represented by counsel. On December 28, 2001, Virginia Jarvis, an employee of The Debt Solution, Inc., in Valencia, California,¹ filed a document entitled "Certification and Signature of Non-Attorney Bankruptcy Petition Preparer (11 U.S.C. § 110)" (Certification) certifying that she is "a bankruptcy petition preparer as defined in 11 U.S.C. § 110." Ms. Jarvis also stated that she prepared the Voluntary Petition filed by the Debtors and all statements and schedules filed with the petition.² Ms. Jarvis' signature, printed name and address, and Social Security number do not appear on the following documents filed by the Debtors on October 31, 2001, as required by 11 U.S.C.A. §§ 110(b)(1) and (c)(1) (West Supp. 2001): the Voluntary Petition; Statement of Financial Affairs; Schedules;

¹ In a brochure filed by its counsel, The Debt Solution, Inc. states that its business purpose is to "assist those with a legitimate hardship get out of dangerous debt situations ethically and completely."

² The filing of the Certification and other documents was prompted by a November 15, 2001 letter from the attorney for the United States Trustee, Patricia C. Foster, to the Debtors. In that letter, Ms. Foster inquired of the Debtors whether someone had assisted them in the preparation of their bankruptcy documents and, if so, she requested the name of that individual. The Debtors forwarded the letter to Ms. Jarvis who then contacted Ms. Foster. Ms. Jarvis thereafter filed the Certification and related documents.

Chapter 7 Individual Debtor's Statement of Intention; Chapter 7 Statement of Intention - Spouse's Debts; and Chapter 7 Statement of Intention - Joint Debts.

Virginia Jarvis filed a second document on December 28, 2001, entitled "Disclosure of Compensation of Bankruptcy Petition Preparer (11 U.S.C. § 110(h))" disclosing that she received \$500.00 from the Debtors for "bankruptcy document preparation services" on October 24, 2001.³ Ms. Jarvis also states that on December 6, 2001, she refunded the Debtors the \$500.00 fee paid for her bankruptcy petition preparer services.

On January 9, 2002, the court, *sua sponte*, filed a Memorandum and Order reciting the facts as outlined above and directed Virginia Jarvis to appear on January 31, 2002, at 9:00 a.m., to show cause why she should not be fined up to \$500.00 each for her failure to sign and print her name and address on the required documents and why she should not be fined up to \$500.00 each for her failure to place her Social Security number on these documents.

At the request of Ms. Jarvis' attorney, the court conducted the January 31, 2002 hearing telephonically at 11:00 a.m., Eastern Standard Time. The court advised counsel for Ms. Jarvis that it did not conduct evidentiary hearings by telephone and felt that the existing record clearly established what had occurred.⁴ Ms. Jarvis' defense, as set forth by her attorney both at the telephonic hearing and in her written Response of Virginia Jarvis to Memorandum and Order

³ See *supra* n.2.

⁴ At the conclusion of the hearing, the court advised Ms. Jarvis that it would delay its ruling to allow her an opportunity to present her testimony through an affidavit. See FED. R. CIV. P. 43(e), incorporated into FED. R. BANKR. P. 9017. She declined.

Dated January 9, 2002, which was filed on January 29, 2002, is that The Debt Solution, Inc., Ms. Jarvis' employer, has refunded the Debtors the \$500.00 fee they paid for Ms. Jarvis' bankruptcy document preparation services; that Ms. Jarvis will not act as a bankruptcy petition preparer in any other bankruptcy case in the Eastern District of Tennessee; that Ms. Jarvis and The Debt Solution, Inc. are not now in the business of preparing bankruptcy petitions in any judicial district; that Ms. Jarvis' failure to comply with the disclosure requirements of § 110 was due to ignorance; and that Ms. Jarvis has learned her lesson and has cooperated fully with the Office of the United States Trustee.

When the court asked Ms. Jarvis' counsel whether Ms. Jarvis had acted as a bankruptcy petition preparer in previous cases, the court was advised that Ms. Jarvis had prepared bankruptcy petitions and related documents for filing in at least twenty other cases outside the Eastern District of Tennessee and that the required disclosures were not made in any of those cases.⁵

II

Bankruptcy Code § 110(a) defines a "bankruptcy petition preparer" as "a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing[.]" 11 U.S.C.A. § 110(a)(1) (West Supp. 2001).

⁵ When counsel for the United States Trustee suggested that The Debt Solution, Inc. and Ms. Jarvis should immediately disclose to the appropriate bankruptcy courts Ms. Jarvis' status as the bankruptcy petition preparer for these cases, counsel for Ms. Jarvis stated that they did not want to make the disclosure because it would be "extremely expensive."

Bankruptcy Code § 110(b) requires in material part:

(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address.

11 U.S.C.A. § 110(b)(1) (West Supp. 2001).

Section 110(c) requires in material part:

(1) A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer's signature, an identifying number that identifies individuals who prepared the document.

(2) For purposes of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document or assisted in its preparation.

11 U.S.C.A. § 110(c)(1)-(2) (West Supp. 2001).

Unless the preparer's failure to comply is "due to reasonable cause," both sections 110(b) and (c) provide that the bankruptcy petition preparer "may be fined not more than \$500.00 for each such failure" 11 U.S.C.A. § 110(b)(2) and (c)(3). This means that if several documents are filed in a case without the requisite preparer identity information, each document constitutes a separate violation and is subject to a fine. See *United States Trustee v. Womack (In re Paskel)*, 201 B.R. 511, 515-16 (Bankr. E.D. Ark. 1996).

In the present case, the bankruptcy petition preparer, Virginia Jarvis, prepared, for compensation, the following documents, all of which required her signature, printed name and address, and Social Security number: the Voluntary Petition, Statement of Financial Affairs, Schedules, Chapter 7 Individual Debtor's Statement of Intention, Chapter 7 Statement of Intention - Spouse's Debts, and Chapter 7 Statement of Intention - Joint Debts. The court finds irrelevant

the fact that Ms. Jarvis refunded the compensation paid her after the Debtors filed their bankruptcy case and she had been contacted by the United States Trustee.⁶

III

Bankruptcy Code § 110(h) requires in material part:

(1) Within 10 days after the date of the filing of a petition, a bankruptcy petition preparer shall file a declaration under penalty of perjury disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor.

11 U.S.C.A. § 110(h)(1) (West Supp. 2001). Ms. Jarvis filed her Disclosure of Compensation of Bankruptcy Petition Preparer (11 U.S.C. § 110(h)) on December 28, 2001, fifty-eight days after the Debtors filed their Voluntary Petition. Section 110 does not impose a penalty for the failure to timely file the compensation disclosure statement.⁷

IV

Ms. Jarvis' actions fly in the face of § 110 of the Bankruptcy Code and are indefensible. Counsel for both Ms. Jarvis and The Debt Solution, Inc. informed the court that The Debt Solution, Inc. has been in business for three years and has approximately 100 employees, at least one of whom is an attorney. Given the nature of its business, counseling financially-distressed consumer debtors and negotiating on their behalf with creditors, the court cannot accept the

⁶ Ms. Jarvis apparently agrees because she refers to herself as "a bankruptcy petition preparer as defined in 11 U.S.C. § 110" in her December 28, 2001 Certification. As noted, a "bankruptcy petition preparer," by definition, is one who prepares a document for "compensation." 11 U.S.C.A. § 110(a)(1).

⁷ A fine is mandated for a bankruptcy petition preparer's failure to comply with a court order requiring the disgorgement of funds. See 11 U.S.C.A. § 110(h)(4) (West Supp. 2001). Here, after being contacted by the United States Trustee, Ms. Jarvis returned the fee to the Debtors.

premise that The Debt Solution, Inc. and Ms. Jarvis were unaware of the requirements of § 110 of the Bankruptcy Code. Accordingly, the court cannot find that Ms. Jarvis' failure to make the required disclosure was "due to reasonable cause."

The court will fine Ms. Jarvis \$100.00 for each of the six violations associated with her failure to place her signature, printed name and address on the Voluntary Petition; Statement of Financial Affairs; Schedules; Chapter 7 Individual Debtor's Statement of Intention; Chapter 7 Statement of Intention - Spouse's Debts; and Chapter 7 Statement of Intention - Joint Debts. Ms. Jarvis will be fined an additional \$100.00 each for her failure to place her Social Security number on these same documents. The fines total \$1,200.00, all of which Ms. Jarvis will be directed to remit to the clerk.

An appropriate order will be entered.

FILED: February 7, 2002

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 01-35351

MARK STEVEN SKINGER
TAMMY SKINGER

Debtors

ORDER

For the reasons stated in the Memorandum on Bankruptcy Petition Preparer Show Cause Order filed this date, the court directs the following:

1. Virginia Jarvis is fined \$600.00 for her violations of 11 U.S.C.A. § 110(b) (West Supp. 2001), payable to the Clerk, United States Bankruptcy Court, Howard H. Baker, Jr. United States Courthouse, Suite 330, 800 Market Street, Knoxville, Tennessee 37902.

2. Virginia Jarvis is fined \$600.00 for her violations of 11 U.S.C.A. § 110(c)(1) (West Supp. 2001), payable to the Clerk, United States Bankruptcy Court, Howard H. Baker, Jr. United States Courthouse, Suite 330, 800 Market Street, Knoxville, Tennessee 37902.

SO ORDERED.

ENTER: February 7, 2002

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE